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8 UNITED STATES DISTRICT COURT

9 FOR THE WESTERN DISTRICT OF WASHINGTON

10 AT TACOMA

11

12 STEVEN D. BANG, an individual,

Case No. 3:21-cv-05834-BJR

13 Plaintiff,

DEFENDANT'S ANSWER TO  
PLAINTIFF'S COMPLAINT

14 v.

15 LACAMAS SHORES HOMEOWNERS  
ASSOCIATION, a Washington nonprofit  
16 corporation,

17 Defendant.

18

19 Defendant Lacamas Shores Homeowners Association answers Plaintiff Steven

20 D. Bang's Complaint as follows:

21 ///

22 ///

## I. INTRODUCTION

1.

Defendant denies the allegations in paragraph 1 of the Complaint.

2.

Defendant denies the allegations in paragraph 2 of the Complaint.

3.

Defendant denies the allegations in paragraph 3 of the Complaint.

## II. JURISDICTION AND VENUE

4.

Paragraph 4 of the Complaint is a legal conclusion for which no response is required; to the extent paragraph 4 alleges facts, those are denied.

5.

Answering paragraph 5 of the Complaint, Defendant admits that it received two letters from Plaintiff dated August 12, 2021, August 17, 2021, and that copies of those letters are attached to the Complaint as Exhibit 1 and Exhibit 2. The remainder of paragraph 5 of the Complaint is a legal conclusion for which no response is required; to the extent the remainder alleges facts, those are denied.

6.

Answering paragraph 6 of the Complaint, Defendant admits that neither EPA nor the Washington State Department of Ecology has commenced an action against Defendant for the violations alleged by Plaintiff and that more than 60 days have passed since the mailing of the letters dated August 12, 2021, and August 17, 2021. The remainder of paragraph 6 of the Complaint is a legal conclusion for which no

1 response is required; to the extent the remainder alleges facts, those are denied.

2 7.

3 Defendant admits the allegations in paragraph 7 of the Complaint.

4 8.

5 Defendant is without sufficient information or knowledge to answer the  
6 allegations in paragraph 8 of the Complaint and therefore denies the allegations in  
7 paragraph 8 of the Complaint.

8 **III. PARTIES**

9 9.

10 Answering paragraph 9 of the Complaint, Defendant admits that Plaintiff  
11 owns the property identified as Clark County Tax Lot 92232678. Defendant is  
12 without sufficient information or knowledge to answer the remaining allegations in  
13 paragraph 9 of the Complaint and therefore denies the remaining allegations in  
14 paragraph 9 of the Complaint.

15 10.

16 Answering paragraph 10 of the Complaint, Defendant admits that it is a  
17 Washington nonprofit corporation and that it owns the property identified as Clark  
18 County Tax Lot 84839000. Defendant denies the remaining allegations in paragraph  
19 10 of the Complaint.

20 **IV. LEGAL BACKGROUND**

21 11.

22 Paragraph 11 of the Complaint is a legal conclusion for which no response is  
23 required; to the extent paragraph 11 alleges facts, those are denied.

12.

2 Paragraph 12 of the Complaint is a legal conclusion for which no response is  
3 required; to the extent paragraph 12 alleges facts, those are denied.

13.

6 Paragraph 13 of the Complaint is a legal conclusion for which no response is  
7 required; to the extent paragraph 13 alleges facts, those are denied.

14.

9 Paragraph 14 of the Complaint is a legal conclusion for which no response is  
10 required; to the extent paragraph 14 alleges facts, those are denied.

11 15.

12 Paragraph 15 of the Complaint is a legal conclusion for which no response is  
13 required; to the extent paragraph 15 alleges facts, those are denied.

14 16.

15 Paragraph 16 of the Complaint is a legal conclusion for which no response is  
16 required; to the extent paragraph 16 alleges facts, those are denied.

17 17.

18 Paragraph 17 of the Complaint is a legal conclusion for which no response is  
19 required; to the extent paragraph 17 alleges facts, those are denied.

20 18.

21 Paragraph 18 of the Complaint is a legal conclusion for which no response is  
22 required; to the extent paragraph 18 alleges facts, those are denied.

23 ///

19.

2 Paragraph 19 of the Complaint is a legal conclusion for which no response is  
3 required; to the extent paragraph 19 alleges facts, those are denied.

4 20.

5 Paragraph 20 of the Complaint is a legal conclusion for which no response is  
6 required; to the extent paragraph 20 alleges facts, those are denied.

7 21.

8 Paragraph 21 of the Complaint is a legal conclusion for which no response is  
9 required; to the extent paragraph 21 alleges facts, those are denied.

10 **V. FACTS**

11 22.

12 Answering paragraph 22 of the Complaint, the Shoreline Permit speaks for  
13 itself; to the extent this paragraph mistakes the Shoreline Permit, those  
14 misstatements are denied. Defendant admits the remaining allegations in  
15 paragraph 22 of the Complaint.

16 23.

17 Defendant admits the first sentence of paragraph 23 of the Complaint.  
18 Defendant denies the remaining allegations in paragraph 23 of the Complaint.

19 24.

20 Answering paragraph 24 of the Complaint, Attachment 1 of Exhibit 1 of the  
21 Complaint speaks for itself; to the extent this paragraph misstates that document,  
22 those misstatements are denied. Defendant denies the remaining allegations in  
23 paragraph 24 of the Complaint.

1 25.

2 Answering paragraph 25 of the Complaint, the draft environmental impact  
3 statement (“DEIS”) and Shoreline Permit speak for themselves; to the extent this  
4 paragraph misstates those documents, those misstatements are denied. Defendant  
5 denies the remaining allegations in paragraph 25 of the Complaint

6 26.

7 Answering paragraph 26 of the Complaint, the SHB’s order speaks for itself;  
8 to the extent this paragraph misstates the SHB’s order, those misstatements are  
9 denied. Defendant denies the remaining allegations in paragraph 26 of the Complaint

10 27.

11 Answering paragraph 27 of the Complaint, Exhibit A to the SHB’s order speaks  
12 for itself; to the extent this paragraph misstates Exhibit A to the SHB’s order, those  
13 misstatements are denied. Defendant denies the remaining allegations in  
14 paragraph 27 of the Complaint

15 28.

16 Answering paragraph 28 of the Complaint, the revised Shoreline Permit and  
17 the fifth-year monitoring report speak for themselves; to the extent this paragraph  
18 misstates those documents, those misstatements are denied. Defendant admits that  
19 monitoring occurred during the five years following the issuance of the revised  
20 Shoreline Permit. Defendant denies the remaining allegations in paragraph 28 of the  
21 Complaint

22 29.

23 Defendant admits the allegations in paragraph 29 of the Complaint.

1 30.

2 Answering paragraph 30 of the Complaint, the Shoreline Permit speaks for  
3 itself; to the extent this paragraph misstates the Shoreline Permit, those  
4 misstatements are denied. Defendant denies the remaining allegations in  
5 paragraph 30 of the Complaint

6 31.

7 Defendant is without sufficient information or knowledge to answer the  
8 allegations in paragraph 31 of the Complaint and therefore denies the allegations in  
9 paragraph 31 of the Complaint.

10 32.

11 Defendant is without sufficient information or knowledge to answer the  
12 allegations in paragraph 32 of the Complaint and therefore denies the allegations in  
13 paragraph 32 of the Complaint.

14 33.

15 Defendant is without sufficient information or knowledge to answer the  
16 allegations in paragraph 33 of the Complaint and therefore denies the allegations in  
17 paragraph 33 of the Complaint.

18 34.

19 Defendant denies the allegations in paragraph 34 of the Complaint.

20 35.

21 Answering paragraph 35 of the Complaint, Defendant admits that in or around  
22 2016, it contacted the City Administrator regarding the Biofilter. Defendant denies  
23 the remaining allegations in paragraph 35 of the Complaint.

1 36.

2 Paragraph 36 of the Complaint is a legal conclusion for which no response is  
3 required; to the extent paragraph 36 alleges facts, those are denied.

4 37.

5 Defendant admits paragraph 37 of the Complaint except for the last sentence,  
6 which Defendant denies.

7 38.

8 Defendant is without sufficient information or knowledge to answer the  
9 allegations in paragraph 38 of the Complaint and therefore denies the allegations in  
10 paragraph 38 of the Complaint.

11 39.

12 Defendant is without sufficient information or knowledge to answer the  
13 allegations in paragraph 39 of the Complaint and therefore denies the allegations in  
14 paragraph 39 of the Complaint.

15 40.

16 Defendant denies the allegations in paragraph 40 of the Complaint.

17 41.

18 Defendant is without sufficient information or knowledge to answer the  
19 allegations in paragraph 41 of the Complaint and therefore denies the allegations in  
20 paragraph 41 of the Complaint.

21 42.

22 Defendant is without sufficient information or knowledge to answer the  
23 allegations in paragraph 42 of the Complaint and therefore denies the allegations in

1 paragraph 42 of the Complaint.

2 43.

3 Defendant denies the allegations in paragraph 43 of the Complaint.

4 44.

5 Answering paragraph 44 of the Complaint, Defendant admits that it received  
6 two letters from Plaintiff dated August 12, 2021, and August 17, 2021. Defendant is  
7 without sufficient information or knowledge to answer the remaining allegations in  
8 paragraph 44 of the Complaint and therefore denies the remaining allegations in  
9 paragraph 44 of the Complaint.

10 45.

11 Defendant admits the allegations in paragraph 45 of the Complaint.

12 46.

13 Defendant admits the allegations in paragraph 46 of the Complaint.

14 47.

15 Answering paragraph 47 of the Complaint, Defendant admits that it received  
16 two letters dated August 12, 2021, and August 17, 2021, more than 60 days prior to  
17 the filing of the Complaint. The remainder of paragraph 47 of the Complaint is a legal  
18 conclusion for which no response is required; to the extent paragraph 47 alleges facts,  
19 those are denied.

20 48.

21 Paragraph 48 of the Complaint is a legal conclusion for which no response is  
22 required; to the extent paragraph 48 alleges facts, those are denied.

23 ///

1 49.

2 Defendant denies the allegations in paragraph 49 of the Complaint.

3 **VI. CAUSE OF ACTION**

4 50.

5 Answering paragraph 50 of the Complaint, Defendant realleges and  
6 incorporates its responses to paragraphs 1 through 49 of the Complaint.

7 51.

8 Paragraph 51 of the Complaint is a legal conclusion for which no response is  
9 required; to the extent paragraph 51 alleges facts, those are denied.

10 52.

11 Defendant admits the allegations in paragraph 52 of the Complaint.

12 53.

13 Defendant denies the allegations in paragraph 53 of the Complaint.

14 54.

15 Answering paragraph 54 of the Complaint, Defendant admits that the “newly-  
16 created” wetland on Clark County Tax Lot 84839000 was designed, at least in part,  
17 to treat stormwater collected from the adjacent development. The Shoreline Permit  
18 speaks for itself; to the extent this paragraph misstates the Shoreline Permit, those  
19 misstatements are denied. Defendant denies the remaining allegations in paragraph  
20 54 of the Complaint.

21 55.

22 Defendant denies the allegations in paragraph 55 of the Complaint.

23 ///

1 56.

2 Paragraph 56 of the Complaint is a legal conclusion for which no response is  
3 required; to the extent paragraph 56 alleges facts, those are denied.

4 57.

5 Defendant denies the allegations in paragraph 57 of the Complaint.

6 58.

7 Answering paragraph 58 of the Complaint, Defendant admits that it owns the  
8 property identified as Clark County Tax Lot 84839000. The remaining allegations in  
9 paragraph 58 of the Complaint are legal conclusions for which no response is  
10 required; to the extent the remainder alleges facts, those are denied.

11 59.

12 Defendant denies the allegations in paragraph 59 of the Complaint.

13 60.

14 Defendant denies any remaining allegations that were not specifically  
15 addressed in the preceding paragraphs.

16 **AFFIRMATIVE DEFENSES**

17 Without waiving the foregoing or assuming the burden of proof with respect to  
18 its affirmative defenses, Defendant asserts the following affirmative defenses:

19 **FIRST AFFIRMATIVE DEFENSE  
(Failure to State a Claim)**

20 61.

21 Plaintiff's complaint fails to state a claim upon which relief can be granted.

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## SECOND AFFIRMATIVE DEFENSE (Lack of Subject Matter Jurisdiction)

62.

The Court lacks subject matter jurisdiction over Plaintiff's cause of action because, but not limited to, the absence of an ongoing or continuing violation, because no past violation is likely to reoccur, and to the extent the Complaint exceeds the scope of the Notice Letter.

## THIRD AFFIRMATIVE DEFENSE (Lack of Standing)

63.

The Court lacks jurisdiction because Plaintiff does not have standing to bring his complaint.

## FOURTH AFFIRMATIVE DEFENSE (Permit Shield Doctrine)

64.

Plaintiff cannot state a violation of the Clean Water Act because the conduct and circumstances underlying Plaintiff's claim are authorized by an NPDES permit.

## **FIFTH AFFIRMATIVE DEFENSE (Unclean Hands)**

65.

Plaintiff's claim and request for injunctive relief is barred, in whole or in part, by Plaintiff's unclean hands.

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## SIXTH AFFIRMATIVE DEFENSE (Laches)

66.

Plaintiff's claim is barred, in whole or in part, by Plaintiff's unreasonable delay in bringing suit.

## SEVENTH AFFIRMATIVE DEFENSE (Due Process Clause)

67.

The civil penalties sought by Plaintiff pursuant to Section 1319(d) of the Clean Water Act violate the due process clauses of the United States Constitution.

## **EIGHTH AFFIRMATIVE DEFENSE (Reservation of Defenses)**

68.

Defendant reserves the right to assert additional affirmative defenses or counterclaims as discovery continues.

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**WHEREFORE**, Defendant prays for a judgment from this Court:

1. Dismissing Plaintiff's Complaint in its entirety, with prejudice and on the merits;
  2. Denying Plaintiff's Prayer for declaratory relief, injunctive relief, civil penalties, an award of costs, including attorneys' fees, expert witnesses' fees, and any other relief sought by Plaintiff;
  3. Awarding Defendant its costs, expenses, disbursements, and reasonable attorneys' fees as permitted by law; and

1           4. For such other and relief as the Court deems just and equitable.  
2  
3 Dated this 7th day of December, 2021. VIAL FOTHERINGHAM LLP  
4  
5           /s/ David M. Phillips  
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